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Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of) MM Docket No. 91-58
)
Amendment of Section 73.202(**RECEIVED**) RM-7419
Table of Allotments)
FM Broadcast Stations) RM-7797
(Caldwell, Texas, et al) SEP 15 1999) RM-7798

To: The Commission

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

COMMENTS ON BRYAN BROADCASTING "REPLY" PLEADING

On August 17, 1999, a "Supplement to Remand Filing" was filed in this proceeding by Bryan Broadcasting License Subsidiary, Inc. ("Bryan") reporting (late) that the FAA had rejected a new transmitter site that had been proposed by Bryan in an amendment filed with the Mass Media Bureau on April 19, 1999. At that time, Bryan indicated that it was still "considering its options". On August 24, 1999, Roy E. Henderson ("Henderson"), filed his Comments on the Bryan Supplement. On September 1, 1999, Bryan filed another pleading, this time styled as a "Reply" to Henderson's Comments but instead suggesting yet another site location for its station (its **FOURTH** in this proceeding) and suggesting that this new site would solve all its problems. We think not, and Henderson's Comments below are directed at Bryan's latest desperate attempt to change the facts of this case to avoid the remand as required by the U.S. Court of Appeals.

As noted in our original Comments (filed April 29, 1999), our Reply Comments (filed May 14, 1999), our Reply Comments as

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authorized and directed by FCC Order DA 99-1050 (filed June 18, 1999) and our Comments on Bryan's Supplement filed August 24, 1999, it has been Henderson's consistent position that the re-analyses of this case, as ordered by the remand of the U.S. Court of Appeals should be upon the fact situation that existed in place at the time of the Commission's last Decision (July 22, 1998) and as they still stood unchanged at the time of the Court's remand (March 3, 1999). To do otherwise would be inequitable in the extreme, contrary to a long established Commission policy to not recognize attempts by any party to change facts in any comparative case under consideration, and would be particularly onerous in the instant case, where the relevant facts of record were brought before the Commission by Henderson well prior to the time of its most recent Decision but not considered by the Commission at that time as they should have been.

As noted earlier, Bryan's first indication of its proposed antenna site was that it (Bryan) was constructing a new tower, fully compliant with all FCC rules. It indicated that the FAA had been notified and that no one else would share the Bryan tower. It described its plan in great detail in not just one but two different applications filed on January 21, 1997. 1/.As soon as a question was raised by FCC staff, Bryan immediately backed away

1/ As fully documented in Henderson's Reply Comments filed June 18, 1999, this initial proposal was itself totally untrue as finally disclosed by Bryan approximately two and one-half years later in its Opposition pleading filed June 7, 1999 (see attachment one of Henderson's June 18, 1999, Reply Comments)

from this proposal (site number one) and filed an Amendment on July 15, 1997 (site number two), proposing a very different approach, that of leasing a space on an existing tower that also just happened to substantially fail to meet the city grade coverage requirements of 73.315(a), failing, in fact to provide a city grade signal to 4,185 persons in 8.4% of its city of license. Its cover having now been blown and its true plans revealed, Bryan adopted a "so what" attitude, admitting the violation of 73.315(a) but claiming that no one could touch them on that now since the Mass Media Bureau followed an unpublished "policy", contrary to the direct words of the rule itself, of requiring only 80% compliance with the requirements of rule 73.315(a).

This was obviously Bryan's true intent in constructing the new upgraded station and since it now felt "insulated" against recognition of its violation of 73.315(a), Bryan was fully content to let its proposal stand that way for a period of almost two years, from the time of its original "corrective amendment" (there have been so many) on July 15, 1997; through the filing of Henderson's "Second Supplement" on September 29, 1997 which specifically called this fact to the attention of the Commission); through issuance of a construction permit to Bryan based upon that representation, on March 20, 1998; through the time of the FCC's final Decision on July 22, 1998; until finally ONE MONTH AFTER THE CASE WAS REMANDED BACK TO THE FCC FROM THE COURT OF APPEALS, on April 19, 1999, Bryan filed its Amendment to change to a new site (site number three) fully compliant with

73.315(a), then arguing that this should serve to "moot" the question of its admitted substantial non-compliance with 73.315(a) versus the alleged de minimis miss by Henderson.

It is clearly obvious that Bryan was fully comfortable with its non-compliant site and the c.p. issued at that non-compliant site and that its 11th hour attempt to specify a new compliant site was nothing less than a transparent attempt to manipulate the facts of the case to specify a 'new site for purposes of the FCC analyses' which, assuming arguendo that the FCC would allow that change and that the Court of Appeals would see it as anything but arbitrary and capricious, would then leave Bryan free, once the case was "final", to once again change back to its non-compliant site. What a wonderful scheme.

Of course, Bryan experienced a small problem in the midst of its pathetic gyrations when the FAA informed Bryan that the antenna site for its April 19, 1999 Amendment was unacceptable. The date on this official determination by the FAA was June 28, 1999, but it was not reported to the FCC until August 17, 1999, almost two months later. Even after that delay, Bryan indicated that it had still located no alternative site and that it was still "reviewing its options". Henderson, in his Comments recognized that although any such attempted move should not in any event be recognized for any purpose in this case, this total failure of the Bryan Amendment just made the Commission's job that much easier

On September 1, 1999, Bryan continued in its desperate attempt to place a blowout patch on its case by filing for yet another site (its 4th in this case), this time proudly proclaiming that it again intends to build a new tower at a new site that is fully compliant with 73.315(a). Of course, there is one little problem there: in order to achieve a site compliant with 73.315(a), it must be non-compliant with 73.207 of the FCC Rules, being short-spaced to the pending application of KYKR(FM) in Beaumont, Texas for a one step upgrade from 236C1 to 236C by 7.36 kilometers. So Bryan is trying to trade one rule violation for another in the hopes that it will improve its current case before the Commission. Beyond that obvious problem, there remains a massive number of other reasons why it should not and cannot be recognized.

As to this new application itself, it is noted that it remains highly speculative and remote, it has no FAA approval of its site and it includes an admitted violation of FCC Rule 73.207. In addition, the new application by Bryan cannot and should not be considered at all by the Mass Media Bureau without first disposing of the incredible record of misrepresentations

and deceptions by Bryan already a matter of record in this case.

2/ This point was also brought to the attention of the Mass Media Bureau in a separate filing by Henderson today, a copy of which is attached hereto. Further, in addition to weighing any representations by Bryan in this case against its extraordinary record of deceptions and misrepresentations, there is the further factor to consider that "AMFM", the ultra parent of the multi-layered Byzantine ownership structure that includes a number of stations owned by one or more members of the Hicks family, has indicated in the September 13, 1999, edition of Inside Radio (copy attached hereto) that it is looking to get out of (i.e. sell) its radio interests in "Bryan College", i.e. radio station KTSR(FM), which is officially licensed to "Bryan Broadcasting License Subsidiary, Inc." We can't even begin to guess what this will mean other than to add even further uncertainty as to Bryan's operation and representations as to KTSR, what it is now, and what it will be in the future.

Lastly, and of substantial importance, in dealing with the never-ending gyrations of Bryan in trying to improve its case, is

2/ The most egregious of these being its false statements in TWO applications filed on January 21, 1997, representing to the Commission in very specific terms how Bryan was going to build its own new tower at a fully compliant site. The Declaration of Ben Downs dated 5-29-99 and submitted by Bryan in an Opposition to Informal Objection filed with the Mass Media Bureau on June 7, 1999 revealed for the first time ever in this proceeding, almost two and one half years after the fact, that that original representation was 100% false. For a full and complete description of this and other deceptions and misrepresentations by Bryan as discovered thus far in this case, see Henderson's Reply Comments in Response to Bryan and DA 99-1050 filed with the Commission on June 18, 1999.

the Commission's own statement in its Request For Supplemental Comments In Response to Court Remand, FCC 99-673, released April 9, 1999, to wit:

In the interest of administrative finality, no information submitted by a party concerning its proposal following the comment period will be deemed of decisional significance.

The 'comment period', as defined in that same document, ended on May 14, 1999 3/ and the Commission's statement, as quoted above, acts as a complete bar, in and of itself, to any consideration whatsoever of the latest proposed site change by Bryan.

We finally note here, in the interests of maintaining a complete record, a final development in the new fact referred to by Henderson at page 24 of its Comments as filed April 29, 1999. Specifically, the Commission has granted the downgrade of station KVIC(FM) in Victoria, Texas, from channel 236C1 to 236C3, as referred to in the Comments, (BPH-990121IE granted August 13, 1999, FCC Public Notice 44553, August 18, 1999) the net effect of which is that a vast new site territory has now been made available northeast of Caldwell which would fully meet all FCC rules, including the city grade coverage requirements of 73.315(a), the fact of which, it was indicated by Henderson in his Comments, Henderson would take full advantage. While this

3/ It is noted here that the Reply Comments filed by Henderson in Response to Bryan Comments and FCC Order DA 99-1050, as filed on June 18, 1999, were specially authorized by the Commission since Bryan had failed to serve Henderson with a copy of its Comments filed during the Comment period, as a condition for acceptance of the unserved Bryan Comments.

case could and should be decided in favor of Henderson based upon the facts already of record, Henderson believes that the development of this additional new relevant fact, first described in Henderson's Comments, should be reported to the Commission, as it has done here.

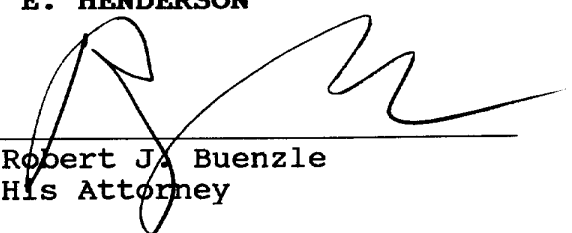
In sum, it appears that Bryan has confused "voracity" with "veracity" in this proceeding, proposing now four different antenna sites and in the course of which leaving the ground littered with repeated and unexplainable deceptions and misrepresentations. Plenty of voracity but precious little veracity. In any event, its dance macabre should be brought to a halt here, and done so in no uncertain terms.

Wherefore, Henderson submits that the latest site change as submitted by Bryan in its "Reply to Comments on Bryan Supplement" is, for the reasons stated above, irrelevant to decision of this proceeding and should be given no consideration herein, and that based upon the evidence of record, properly before the Commission in this case, the proposal of Henderson should be granted and the proposal of Bryan denied.

Respectfully Submitted,

ROY E. HENDERSON

by



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His Attorney

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September 15, 1999

Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of:

Application of)	
Bryan Broadcasting License Subsidiary)	
To Modify Construction Permit of)	BMPH-990419IB
KTSR(FM), College Station, Texas,)	
to Change channel from 221A and)	
297C3 (Unbuilt C.P.) to 236C2 and to change)	
Transmitter Site and Parameters)	

To: Chief, Mass Media Bureau
Audio Services Division

**COMMENTS OF ROY E. HENDERSON ON AMENDMENT FILED
BY BRYAN BROADCASTING LICENSE SUBSIDIARY, INC.**

On May 14, 1999, Roy E. Henderson ("Henderson") filed his Informal Objection to the above application that had been filed on April 19, 1999, by Bryan Broadcasting License Subsidiary, Inc. ("Bryan"). On August 17, 1999, Bryan filed an Amendment with the Bureau disclosing that approximately two months prior to that date, it had been informed by the FAA that the tower site proposed by Bryan was unacceptable. At that time, Bryan indicated that it was still "...reviewing alternative sites and other options to resolve this problem".

On September 1, 1999, Bryan filed another Amendment, this time proposing yet another (its fourth) transmitter site. It is unknown whether the new site will be any more acceptable to the FAA than the old site, but what is known is that it will be short-spaced to the pending application of KYKR(FM) in Beaumont, Texas by 7.36 kilometers, in violation of FCC Rule 73.207.

As noted by Henderson in prior filings in this proceeding, Bryan is part of an allocation case in FM Docket 91-58 which has been remanded by the U.S. Court of Appeals to the Commission to re-examine the substantial violation of 73.315(a) which is part of Bryan's present site, and the impact of that violation upon the remanded case. In order to seek to avoid that Court-ordered examination, Bryan is now desperately seeking to change its existing transmitter site in the hopes that the Commission will recognize the 11th hour attempt to manipulate the facts of the case in its favor. After searching for over two months after being notified of the unacceptability of its April 19, 1999 proposed site, it has now come up with its fourth site, this one claiming to be compliant with 73.315(a), but at the cost of being non-compliant with 73.207.

Having failed to obtain FAA approval for its most recent amended site filed April 19, 1999 (a little over one month after the Court's remand), it now appears that Bryan's latest maneuver is to propose to exchange the violation of 73.315(a) at its existing site for a new site that only violates 73.207. We would suggest that this is just the most recent action by Bryan in long pattern of manipulation, deception, outright misrepresentations, and abuse of the FCC processes by Bryan in order to seek to affect the pending analyses and decision in Docket 91-58, that it should be seen for what it is, and that it should be rejected.

In any event, we would renew and underscore our position here that the Bureau must first deal with the undisputed

deceptions and misrepresentations of record by Bryan in this case, in the prior applications filed with the Bureau 1/ and then examine the substance of Bryan's Amendments in light of those findings.

Wherefore Henderson renews his request in the Informal Objection that the Bryan application, as amended, be denied, dismissed, or set for evidentiary hearing.

Respectfully Submitted,

ROY E. HENDERSON

by



Robert J. Buenzle
His Attorney

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September 15th, 1999

1/ A fully documented exposition of the Bryan deceptions and misrepresentations is set forth in Henderson's "Informal Objection And Motion To Deny Application Or Designate Application for Evidentiary Hearing" as filed May 14, 1999, and "Reply to Opposition To Informal Objection And Motion To Deny Application Or Designate Application For Evidentiary Hearing" as filed with the Mass Media Bureau on June 16, 1999.

CERTIFICATE OF SERVICE

I, Robert J. Buenzle, do hereby certify that copies of the foregoing COMMENTS OF ROY E. HENDERSON ON AMENDMENT FILED BY BRYAN BROADCASTING LICENSE SUBSIDIARY, INC. have been served by United States mail, postage prepaid this 15th day of September, 1999, upon the following:

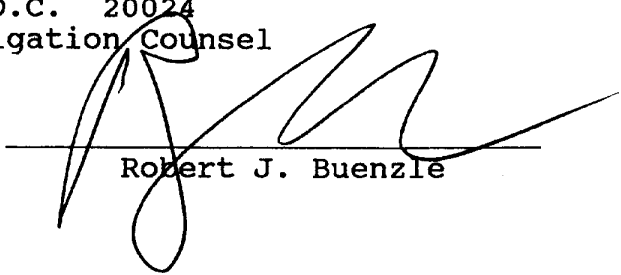
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* Served by Hand

INSIDE RADIO®

Monday, September 13, 1999

Published by Jerry Del Colliano/609-424-6800

Cumulus, NextMedia both bid \$65 for AMFM Capstar leftovers. Stations in 12 markets being sold by AMFM because they are either not full clusters or not in markets where AMFM wants to be. Total broadcast cash flow for the 12 markets being offered makes the multiple ten times. Insiders say Beasley Broadcasting has also made a serious offer. Most potential buyers are not interested in all the markets but plan to sell or swap what they don't want. AMFM has not decided on a buyer yet. The markets being sold include: Springfield, MA; Springfield, IL; Yuma, AZ; Battle Creek, MI; Colorado Springs, CO; Lawton, OK; Victoria, TX; Alexandria, LA; Midland/Odessa, TX; Amarillo, TX; Gadsden, AL; Farmington, NM. Some thought is also being given to selling the seven-station Honolulu cluster. Other markets AMFM is looking to exit (not included in this package): San Diego, Huntington, Riverside, Modesto, Ft. Walton Beach, Puerto Rico, Montgomery, Bryan College, Ogallala, NE, Aztec, NM. Miami, New Haven and Atlanta stations were traded to Cox recently for two Cox Los Angeles stations. Media Services Group's Austin Walsh who gave Jim de Castro one of his first jobs is the broker in this deal.

Ex-Chancellor exec Scott Ginsburg to fight SEC allegations of insider trading. SEC claims Ginsburg told his brother Mark and father Jordan that EZ Communications was for sale back in 1996. Mark and Jordan then bought 73,800 shares of the company and made around \$1 million when the company was sold for \$655 million in August 1996. In 1997 the SEC alleges that Scott and his father bought 150,000 shares of Katz Media based on inside information that the firm was for sale. They then supposedly turned a \$729,000 profit when the deal was done. The SEC wants Scott, Mark and Jordan to pay about \$1.8 million back. The Ginsburgs plan to fight. Their lawyers say they will contest the charges. Those close to the investigation say the Government's case appears to be circumstantial. No evidence or direct witnesses. Most insider trading cases involve the tipper getting money and failing to disclose information. Not the case in the Ginsburg charges. Ginsburg's brother is one of the most active individual media traders in the U.S. This is a civil not criminal suit. Scott Ginsburg resigned as CEO of Chancellor (now AMFM) in 1996.

Clark Broadcasting exits radio with sale of Easton, PA cluster. Stations include adult standards WCEI-AM and AC WCEI-FM. Selling to First Media for \$4.2 million. Clark's

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CERTIFICATE OF SERVICE

I, Robert J. Buenzle, do hereby certify that copies of the foregoing "Comments on Bryan Broadcasting "Reply" Pleading" have been served by United States mail, postage prepaid this 15th day of September, 1999, upon the following:

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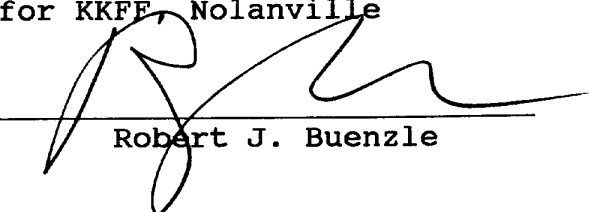
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